

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a GIL).

April 24, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 26, 2002. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Our business sells brush chippers, tub grinders and stump grinders. We have customers ask us about **sales tax exemption** for the sale of our equipment when used in specific applications.

This equipment mulches trees that are anywhere from twigs to trees that are 7 foot in diameter. The mulch in the majority of the cases that is created from these machines is sold to other businesses and individuals for resale or wholesale. This equipment grinds tree products only; therefore this is the disposal of an environmental product without the use of burning or disposal at landfills.

We have several questions that we need a legal ruling or opinion based on the above scenarios.

1. Under the Pollution Control Facilities rules, Section 130.335, would these pieces of equipment qualify as sales tax exempt because they are recycling trees into reusable by-product and not disposing of these by burning or hauling to landfills?

Burning is an environmental hazard and the filling of landfills with an environmental friendly product is prohibited.

2. Would these machines qualify for sales tax exemption under the Manufacturing Machinery and Equipment, Section 130.330? This equipment is used to alter a product from a raw form to a resalable form. This is from a tree to a mulch product that is sold.

3. From the information we have, a majority of the byproduct (mulch) generated by these machines is sold either in a bag or bulk form to individuals or businesses. Therefore, they meet the 50% usage requirement for the manufacturing equipment.
4. If the selling of the equipment would qualify for either of these sales tax exemptions or an other sales tax exemption status that are not noted what are the filing requirements necessary in order for the customers to claim this exemption?
5. Is it possible that some of the units are sales tax exempt and others are not? The difference being on the smaller brush chippers that can chip trees up to 20 inches in diameter or the Tub Grinders that can mulch trees up to 7 feet in diameter.

We would like you to site the Illinois code sections or any letter rulings where this equipment would or would not qualify for sales tax exemption status.

We greatly appreciate your assistance in these matters.

#### **DEPARTMENT'S RESPONSE:**

We have enclosed a copy of 86 Ill. Adm. Code 130.335 which contain the Department's rules concerning the pollution control facilities exemption. The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property." The brush chippers, tub grinders and stump grinders described in your letter would not generally qualify for the pollution control facilities exemption. However, such items may qualify for the manufacturing machinery and equipment exemption.

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See the enclosed copy of 86 Ill. Adm. Code 130.330. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation.

The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant. See subsection (b)(2) of Section 130.330.

The brush chippers, tub grinders and stump grinders described in your letter that are used primarily (over 50% of the time) to create mulch for retail or wholesale sale may generally qualify for

the manufacturing machinery and equipment exemption.<sup>1</sup> To document this exemption, the purchasers must provide the retailer with an exemption certificate described in subsection (g) of Section 130.330. Please note that brush clippers, tub grinders and stump grinders described in your letter that are not used in such a qualifying manner will be subject to tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.

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<sup>1</sup> We are basing this information on the understanding that the items referenced in your letter do not include hand tools. Hand tools do not qualify for the manufacturing machinery and equipment exemption. See subsection (c)(3) of 86 Ill. Adm. Code 130.330.